



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2003-2373

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179013.

The Anderson County Criminal District Attorney (the "district attorney") received a request for "an unredacted copy of each open records advisory and all attachments that you have sent to the Attorney General since May 1, 2002." The district attorney interprets this as a request for the supplemental briefs and accompanying requested information that have been submitted to this office in connection with requests for open records decisions. You state that this office has previously ruled on all of the accompanying requested information in twelve Open Records Letter Rulings. You do not indicate, nor does it appear, that the facts and circumstances surrounding our prior rulings have changed since the issuance of those rulings. Consequently, we find that you may rely upon those Open Records Letter Rulings as previous determinations to withhold the information we ruled could be withheld. *See* Open Records Decision No. 673 (2001). However, you must release the information we determined in those Open Records Letter Rulings must be released. *See* Gov't Code § 552.301(f). As the accompanying requested information has been previously ruled upon, we only address the public nature of the supplemental briefs.

We understand you to argue that the submitted documents reveal information that was under review by our office, and as such should be withheld because they detail the information that was in question at the time. You acknowledge, however, that the communications between a governmental body and our office stating why requested information should not be disclosed are ordinarily available to the public. Open Records Decision No. 459 (1987). We note that this office has previously determined that, when we have held information to

be within an exception to disclosure, that exception authorizes the governmental body to withhold the portions of its request letter that would disclose this information. *Id.* In this instance, portions of the submitted briefs reveal information that we subsequently held to be excepted from disclosure. We will address those portions of the submitted briefs below.

In Open Records Letter No. 2002-5127 (2002) we ruled that the majority of a requested police file must be withheld under section 552.101 of the Government Code and common-law privacy. Section 552.101 excepts information that is considered confidential by law and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). A portion of the supplemental brief submitted as Exhibit C reveals information we determined was confidential under common-law privacy. The district attorney must withhold this information, which we have marked, under section 552.101. The remainder of Exhibit C must be released to the requestor.

In Open Records Letter No. 2002-3838 (2002) we ruled that requested videotapes could be withheld under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). In OR2002-3838, we concluded that the videotapes could be withheld under section 552.108 because, at that time, you advised that the videotapes related to, and were currently being used in, a criminal investigation by the county sheriff’s department. You also indicated that the district attorney would prosecute the case once the investigation was completed. Portions of the supplemental briefs submitted herein as Exhibits E and F reveal information within these videotapes that we held to be excepted from disclosure under section 552.108. Thus, the district attorney may withhold this information, which we have marked under section 552.108, if the videotapes are still related to a pending criminal case. The remainder of Exhibits E and F must be released to the requestor.

In Open Records Letter Nos. 2002-4054 (2002) and 2002-4541 (2002) we ruled that certain documents were medical records that were confidential under the Medical Practice Act (the “MPA”) and could only be released in accordance with the MPA. The MPA governs the release of records “of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician.” Portions of the supplemental briefs submitted as Exhibits H and L reveal information within the documents we determined were confidential under the MPA. We have marked the pages of Exhibits H and L that contain this information. The district attorney may only withhold the information in the supplemental briefs that reveals information we previously ruled was subject to the MPA. The remainder of Exhibits H and L must be released to the requestor.

In Open Records Letter No. 2002-4538 (2002) we ruled that Open Records Letter No. 2002-4189 (2002) served as a previous determination and the requested information must be released or withheld in accordance with that ruling. Open Records Letter No. 2002-4189 ruled that some information within the personnel files was protected under section 552.117(2). Section 552.117(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of licensed peace officers. Portions of the supplemental brief submitted as Exhibit M reveal information we determined was excepted under section 552.117(2) in Open Records Letter Nos. 2002-4538 and 4189. The district attorney must withhold this information, which we have marked, under section 552.117(2). The remainder of Exhibit M must be released to the requestor.

As the remaining supplemental briefs submitted as Exhibits D, G, I - K and N - P do not reveal information that we have held to be excepted from disclosure, these briefs must be released to the requestor in their entirety.

In summary, the district attorney must withhold the portions of the submitted supplemental briefs that reveal information we have previously determined to be excepted from disclosure under sections 552.101, 552.117, and the MPA. The district attorney may withhold portions of the submitted supplemental briefs that reveal information that we previously determined to be excepted under section 552.108, provided that the videotapes there at issue are still related to a pending criminal case. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

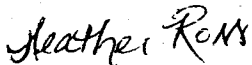
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 179013

Enc: Submitted documents

c: Mr. Gerald Moore
The Clarion
309 West Oak
Palestine, Texas 75801
(w/o enclosures)